Civil Writ Petition No.6779/1994
Pawan Kumar Bansal
Versus R.P.S.C. & Ors.

Date of Order ::: 24/04/06

Hon'ble Mr. Justice Ajay Rastogi

Mr. R.D.Rastogi, for petitioner
Mr. S.N.Kumawat for respondent-RPSC

At joint request, instant petition is being disposed of at admission stage in terms of order dt.22/12/94 of this Court.

Controversy raised at the bar relates to interpretation of R.16 of the Rajasthan Subordinate Accounts Service Rules, 1963 ("***Rules, 1963***").

Petitioner joined service as Lower Division Clerk after selection by Rajasthan Public Service Commission ("***RPSC***"). He holds the post of LDC substantively. Posts of Accountant & Jr. Accountant are included in Schedule appended to Rules, 1963 and procedure for recruitment for conducting combined competitive examination is provided U/r 16 and Schedule II of Rules, 1963. Advertisement dt.31.10.92 (Ann.R/1) was issued by RPSC inviting application for posts of Accountant & Junior Accountant (direct recruitment) by combined examination, 1992.

At the very outset it is made clear that there was no post of Revenue Accountant advertised vide Ann.R.1 and selection process was initiated only for posts included in Schedule to Rules, 1963. As regards post of Jr. Accountant, 12.5% quota is reserved for members of Ministerial staff holding posts in substantive cadre as provided U/r 6(iii) of Rules, 1963 – in pursuance whereof, petitioner being

eligible for both the posts advertised vide Ann.R.1 submitted application but has given his preference for post of Accountant. After his participation in selection process, petitioner was declared successful as secured 332 out of 600 total marks as is evident from mark sheet (Ann.3).

It is not in dispute that candidate who secured 329 marks namely Natya Kishore Saini – holding post of LDC against quota of 12.5%, was considered and appointed as Jr.Accountant in selection process vide advertisement (Ann.R.1).

After petitioner participated in final selection – when his candidature was not considered for post of Jr. Accountant, he made representations – in pursuance whereof vide letter dt.31/10/94 he was communicated inter-alia that as he failed to give his preference in terms of Cl.10 of advertisement for post of Jr. Accountant; hence his name has not been recommended to the State Govt. for appointment.

Counsel for petitioner contends that U/r 16 of Rules, 1963 a combined competitive examination for direct recruitment to the Service & Rajasthan Revenue Accounts Subordinate Service is provided and there is common selection for posts under both the services, ibid, consisting of posts enlisted in Schedule II to Rules, 1963; and those finally selected, whose merit is compatible with their preference, are first considered for appointment as per their order of preference – in absence whereof, right of consideration for appointment as per order of merit prepared by RPSC, in no manner can be obliterated only on premise that he has failed to give preference

for the post for which he participated in selection process and finally selected & placed in order of merit, and this can never be an object of R.16 of Rules, 1963 and denial of appointment to petitioner despite his name found place in order of merit , is arbitrary and violative of Rules, 1963 & so also principles of natural justice. In support of his contention, Counsel placed reliance on unreported decision of this Court delivered on 10/08/1981 in ***Ashok Dave Vs. State & RPSC Ajmer (CWP No.1838/80),*** and so also DB decision of this Court ***in State of Rajasthan Vs. Smt.Kirti (2002 (UC) WLC 228).***

Respondents have filed their reply wherein final selection and order of merit of petitioner has not been disputed, but averred that since petitioner failed to give preference for post of Jr. Accountant while there was requirement under Cl.10 of advertisement (Ann.R.1), which he failed to fulfill; as such no error was committed in rejecting his candidature for appointment vide letter dt.31/10/04 (Ann.7).

Counsel for respondents urged that under Scheme of Rules, 1963 and as per advertisement Cl.10, candidate was called upon to give their preference for the advertised post and despite opportunity offered to petitioner, indisputably, he gave preference only for Accountant and not of Jr. Accountant; as such in absence of any preference to a post given by him, he could not have been considered for appointment to the post – not opted for, and this is in consonance of R.16 of Rules, 1963; in such circumstances, even if his name finds place in order

of merit, he has no indefeasible right to seek appointment despite having participated in selection process for a post not opted for.

I have considered rival contentions of parties and with their assistance, examined material on record. Before I advert to controversy raised at the bar, I would like to have brief resume of Scheme of Rules, 1963 as relevant for adjudication of the issue. Proviso (iii) to R.6 of Rules, 1963 reads -

> "***6. Method of Recruitment*** – Recruitment to the Service shall be made in the manner specific in column 3 of the Schedule by recruitment in accordance with Part IV of these Rules :-
>
> ***(iii)*** Provided also further that 12.5% of posts of Junior Accountants to be filled in by direct recruitment shall be reserved for being filled in from amongst the ministerial staff of all the departments of the government holding a post in the cadre substantively, subject to their being found otherwise eligible for such recruitment under the Rules. This reservation shall be carried forward only to the next succeeding year."

Indisputably, 12.5% post of Jr. Accountants is reserved U/r 6(iii), ibid, for ministerial staff of all departments of the Government holding post in substantive cadre.

Part IV of Rules, 1963 provides procedure for recruitment U/r 16 – Sub rule (1) whereof provides for conducting competitive examination for direct recruitment to th Service in accordance with Syllabus prescribed in Schedule II. Sub rule (2) provides that subject to sub-rule (1), Commission may hold combined competitive examination for direct

recruitment to the Service & Rajasthan Revenue Accounts Subordinate Service, for which there shall be only one application form. Sub-rule(3) of R.16 provides as under :-

> "***(3)*** Any person may apply to be admitted as a candidate for appointment for ***posts in any one or more of the Services mentioned in the Notice*** for which he is eligible. He shall state in the application the posts in the ***various services he wishes to compete for and the order of his preference for such posts***. The order of preference once exercised by a candidate shall not be changed." ***(emphasis added)***

Thus, an eligible person can apply for appointment to posts in any one or more of the Services mentioned in sub-rule (2) & (3), ibid.

R.23 of Rules 1963 provides procedure for recommendations of the Commission as under : -

> "***23. Recommendations of the Commission***. Subject to the provisions of sub-rule (2) of rule 7, the Commission shall ***prepare for each Service, a list of the candidates for appointment to the posts*** by direct recruitment arranged in the order of merit of the candidates as disclosed by the aggregate marks obtained by each candidate in the combined competitive examination and forward the same to the appointing authority. If two or more of such candidates obtain equal marks in the aggregate the Commission shall arrange their names in the order of merit on the basis of their general suitability for the service." ***(emphasis added)***

R.26(1) of Rules, 1963 provides procedure for

selection by Appointing authority as under :

> "***26. Selection by Appointing Authority*** :- ***(1)*** Subject to the provisions of rule 7 & 7A, the Appointing Authority shall select candidates who stand highest in the order of merit in the list prepared by the Commission under rule 23 strictly in accordance with the order of preference given by the candidate in their application forms for different Services/posts.
>
> ***Provided*** that the inclusion of a candidate's name in the list confers no right to appointment unless Appointing Authority is satisfied after such enquiry as may be considered necessary that the candidate is suitable in all other respects for appointment to the Service."

Sub-rule (1) of R.26 of Rules 1963 provides that the appointing authority shall select candidates who stand highest in the order of merit in the list prepared by the Commission U/r 23 strictly in accordance with order of preference given by candidates in their application forms for different services/posts.

Schedule II to Rules, 1963 provides revised scheme of papers for the combined competitive examination for Accountant, Junior Accountant & Tehsil Revenue Accountant.

Sole issue which requires consideration herein is as to whether despite candidate being higher in order of merit can be deprived of his appointment to the Service merely because he has not given his preference in term of R.16(3) while submitting application in pursuance of advertisement (Ann.R.1).

Resume of Scheme of Rules, 1963 (supra) depicts that combined competitive examination as per Schedule II has to be held by the Commission U/r 16 (3) of Rules 1963 for direct recruitment for both the subordinate Services i.e. Rajasthan Subordinate Accounts Service & Revenue Accounts Subordinate Service. Therefore, while submitting application if candidate wishes to compete for both Services (supra), he has to disclose his preference for such post under advertisement and accordingly after his final selection, Commission prepares merit list for each Service and not for each post and arranged in order of merit of candidates as disclosed by aggregate marks obtained in combined competitive examination and forwards the list so prepared to the appointing authority in terms of R.23 for each "***Service***" which means Rajasthan Subordinate Accounts Service & Revenue Accounts Subordinate Service, as the case may be.

In instant case, indisputably, there was no post included in advertisement (Ann.R.1) relating to Revenue Accounts Subordinate Service, for which condition of eligibility is one and the same and no independent suitability has to be assessed either by the Commission or appointing Authority (State Govt.) while giving appointment to candidates finally selected in a combined competitive examination held under Schedule II.

After a conjoint reading of Rr.16(3), 23 & 26 of Rules, 1963 it clearly emerges that after the Commission recommends as per list prepared in order of merit for each Service, candidates are considered

for appointment to the posts as per order of their merit. On a careful analysis of Scheme of Rules, 1963, in my considered opinion, if posts included are related to one Service as happened in instant case, for which combined competitive examination has been held, there was hardly any occasion for an applicant to give his preference. Object of Scheme of Rules is to select the best available candidate who stand in the order of merit, which at no stage has to be sacrificed, particularly when criteria for making recommendations for appointment under direct recruitment for the post in question U/r 23 read with R.26 of Rules, 1963 is solely merit and non else.

Requirement to opt for preference U/r 16 (iii) of Rules, 1963 arises when there is a combined examination for both the Services and the candidate being higher in merit has a choice to get appointment for the Service which he opted for, and in absence of any preference furnished, in my considered opinion, his entitlement for appointment as per order of his merit in no manner can be sacrificed particularly when he has participated in combined competitive examination where his suitability is adjudged not for any post but for both the Services included under Rules, 1963 while making final selection.

As per **Black's Law Dictionary** (6th Edn) (Centennial Edn.1891-1991), "***Prefer***" means – to give advantage,priority, or privilege; to select for first payment, as to prefer one creditor over others; and "***Preferred***" means – possessing or accorded a priority, advantage, or privilege; generally denoting a prior or superior claim or right of payment as

against another thing of the same kind or clause.

According to **New Shorter Oxford** English Dictionary, "***prefer***" denotes favour (one person or thing) in preference to or to another (also followed by over); like better; also choose rather (to do, that); and "***Preferable***" depicts – worthy to be preferred; to be chosen rather than another, more desirable; displaying preference, preferential. "***Preference***" means – the action or an act of preferring or being preferred; liking for one thing rather than another, predilection.

Even from literary meaning of word, "***preference***" (supra), one may prefer for better choice amongst others available to him but that does not mean if he has not given any preference for other posts for which he has participated in process of selection also that too cannot eliminate him from consideration of his candidature for appointment if his name even otherwise finds place in order of merit and this fact cannot be ruled out that final selection & appointment is made U/r 23 & 26 of Rules, 1963 only on the basis of merit and there is no other consideration which can be taken note of by Authority in offering appointment to selected candidates.

In ***Ashok Dave Vs. State (supra),*** this Court has occasioned to examine almost analogous provision to R.15 of Rajasthan State & Subordinate Services (Combined Competitive Examination by direct recruitment) Rules, 1962; and observed as under :-

> "It is true that the preferences initially be adjusted by the Commission under sub-rule(3) of R.15, but it is ***immaterial whether it is to be done by***

the PSC or by the State Government, because that is only a question of procedure, the candidate, ***who get merit in the merit list published by the PSC can always claim that even if he cannot be adjusted amongst the preferences given by him, and*** **if he is more meritorious than other persons, he should be adjusted amongst both services which remain as a residuary to his preferences**. To make the above clear in the instant case, the six preferences given by the petitioner could not be availed of by him, because he was not so meritorious. But, so far as the ***two services of Co-operative and Labour are concerned, though he did not give any preference for them,*** but he **was more meritorious than the candidates who were selected in them**. This factual position is not in dispute as per the letter sent by Mr.S.C.Sharma, a copy of which has been placed on record."

"It is true that in a given case, it could create enormous difficulty to the PSC, but unless a clause provision for the penalty or consequences of non-giving of some references is enacted in the rule, I cannot deprive meritorious person from appointment because of his lapse or mistake, which can only be treated as irregularity in view of the present position of law, as contained in the rules. I am also convinced that the interpretation which I have taken would enhance justice and is more equitable and in no way it would do any violation to the relevant rules, mentioned above. This is so for the simple reason that rejecting the head and appointing the tail would be against all canons of justice & law, and such an absurdity

should not be permitted unless the legislature in clear terms contemplates so." **(emphasis added)**

In the light of what has been observed (supra), submission made by Counsel for respondents that since petitioner failed to disclose his preference in application form submitted in pursuance of advertisement (Ann.R.1) for the post in question, is of no substance and stands rejected.

Consequently, this writ petition succeeds and is hereby allowed. Communication dt.31/10/94 (Ann.7) is quashed & set aside. Respondent RPSC is directed to recommend name of petitioner for appointment to the post of Jr. Accountant on the basis of his selection in pursuance of advertisement dt.31/10/92 (Ann.R.1) and the State Govt. is directed to give him appointment immediately thereafter. However, he will be entitled to seniority, notional fixation of pay alongwith other benefits from the date candidates junior to him were appointed in Service as Junior Accountant; but will be entitled for pecuniary benefits of the post only from the date he joins service. All exercise to comply with this Order be made within three months. No costs.

(Ajay Rastogi), J.

K.Khatri/6779CWP1994.